

The Inconveniences of Transnational Democracy

Cabrera, Angel

DOI:

[10.1111/j.1747-7093.2007.00071.x](https://doi.org/10.1111/j.1747-7093.2007.00071.x)

Citation for published version (Harvard):

Cabrera, A 2007, 'The Inconveniences of Transnational Democracy', *Ethics & International Affairs*, vol. 21, no. 2, pp. 219-38. <https://doi.org/10.1111/j.1747-7093.2007.00071.x>

[Link to publication on Research at Birmingham portal](#)

General rights

Unless a licence is specified above, all rights (including copyright and moral rights) in this document are retained by the authors and/or the copyright holders. The express permission of the copyright holder must be obtained for any use of this material other than for purposes permitted by law.

- Users may freely distribute the URL that is used to identify this publication.
- Users may download and/or print one copy of the publication from the University of Birmingham research portal for the purpose of private study or non-commercial research.
- User may use extracts from the document in line with the concept of 'fair dealing' under the Copyright, Designs and Patents Act 1988 (?)
- Users may not further distribute the material nor use it for the purposes of commercial gain.

Where a licence is displayed above, please note the terms and conditions of the licence govern your use of this document.

When citing, please reference the published version.

Take down policy

While the University of Birmingham exercises care and attention in making items available there are rare occasions when an item has been uploaded in error or has been deemed to be commercially or otherwise sensitive.

If you believe that this is the case for this document, please contact UBIRA@lists.bham.ac.uk providing details and we will remove access to the work immediately and investigate.

The Inconveniences of Transnational Democracy

Luis Cabrera^{*}

When then European Union Trade Commissioner Pascal Lamy returned from the 1999 World Trade Organization (WTO) ministerial in Seattle, where gas-choked streets overflowing with tens of thousands of protesters had signaled the emergence of a worldwide movement against “corporate-led globalization,” he expressed support for broadening the input taken on trade-rules formation. One lesson of the WTO’s failure to launch a new round of trade talks, Lamy told his audience at the European Parliament, was that the organization should consider ways to improve representation, including proposals to create a WTO parliamentary body. Such a body, even if purely consultative, could provide more avenues of access and give greater legitimacy to WTO governance as the organization’s regulatory impacts continued to expand.¹

Some six years later, Lamy, this time as WTO director general, spoke again to a group of parliamentarians about the possibilities of adding another branch to the organization’s governance. Here, the audience was the steering committee of the Parliamentary Conference on the WTO, whose globally dispersed membership of national lawmakers has been pressing for greater inclusion and staging its own informal parliamentary meetings at WTO trade talks since Seattle. Lamy praised the parliamentarians as “crucial partners of the WTO . . . essential to ensuring both the understanding and acceptance of the WTO at the national level; and equally essential to tailoring new international obligations to domestic interests and needs.”² And, though he encouraged Parliamentary Conference members to continue issuing position papers and otherwise calling attention to important trade-related issues informally, he was careful to note that any decision on their formal inclusion would require consensus from all of the nearly

^{*} I would like to thank for their helpful comments Andrew Sabl, Christina Beltran, Loren King, Jamie Mayerfeld, Thom Brooks, Christian Barry, Matt Peterson, Zornitsa Stoyanova-Yerburgh, and the anonymous reviewers for this journal. An earlier version of this article was presented at the 2005 meeting of the American Political Science Association.

150 WTO state members. This time, Lamy offered no explicit support for such a move.

The shift should not be surprising. Indeed, if the director general had continued to press publicly for the formal inclusion of parliamentarians in WTO governance, even in a consultative role, he would have been challenging the organization's long-standing core argument against broadening participation in global trade governance. The argument, offered by the organization and numerous academic defenders, rejects claims that the increasing impacts of the binding trade rules negotiated at the supranational level on issues ranging from trade in services, to intellectual property rights, to food safety and natural resource management should lead to greater participation by constituencies within states.³ Rather, it holds that the current system of international trade negotiations, where executive-branch delegations represent states' interests in closed sessions, is appropriately configured. More specifically, it holds that broader participation in actual negotiations, by parliamentarians, nongovernmental organizations, or others, would simply open the door to a destructive protectionism. It would facilitate rent seeking by powerful domestic interests, lead to significant distortions in global trade liberalization, and could hamper WTO members' efforts at realizing economic growth and greater prosperity.

The literature critiquing WTO transparency and accountability is large and growing. Few commentators, however, have engaged directly with such "don't kill the goose" arguments against broader participation. This article explores similarities between the claims of defenders of the WTO status quo and past arguments for elitist forms of democracy, where strict limitations on the participation of ordinary citizens are advocated in the name of allowing leaders to produce collectively rational policy outcomes. The arguments for the WTO status quo are vulnerable to the same kinds of critiques that have been lodged against elitist democracy arguments, and such external exclusions in general have become increasingly problematic as the impact of WTO rules has grown globally. Advocated here is the adoption of a broad principle of democratic symmetry in WTO governance, under which the impact of the organization's rules would be more closely matched by the input afforded to affected constituencies within states. Democratic symmetry could be a more demanding principle than others put forth by commentators on WTO institutional reform.⁴ It is flexible enough in application, however, to guide the growth of suprastate participatory institutions in accordance with the reach of WTO rule-making authority. Over

time, the observance of the principle could lead to the development of a parliamentary assembly broadly similar to the current European Parliament, one exercising robust powers of codecision in WTO governance.

CURRENT WTO GOVERNANCE

Despite some steps toward greater openness taken by developed state members, the World Trade Organization continues to operate primarily on what has been described as the diplomatic “club model.”⁵ In the model, which emerged with the Bretton Woods Institutions following World War II, power is delegated to teams of issue-specific delegates meeting behind closed doors in a “club” of like delegates to negotiate agreements on behalf of the people of a state.⁶ Thus, trade ministers are most prominent in GATT/WTO talks, finance ministers in the International Monetary Fund, and so on. Participation in and public scrutiny of the talks is limited in order to facilitate the often politically sensitive negotiation of trade rules. There are disciplining mechanisms that can be brought to bear on delegates in case of unsatisfactory outcomes, but the mechanisms are generally triggered only *ex post*.⁷

Some developed states have made limited moves to broaden their delegations or take formal input from domestic stakeholders ahead of negotiations, in particular since the mass public protests at Seattle and at subsequent meetings involving international economic institutions.⁸ Following the Seattle ministerial, European Union trade officials launched the Trade–Civil Society Dialogue meetings in Brussels. At such meetings, NGO participants are given the opportunity to share information with trade officials, air grievances, and offer advice. The United States has broadened representation on its trade advisory committees, and to a lesser extent on trade delegations, and it also has pressed for more transparency in the adjudication of trade disputes within the WTO.⁹ And the WTO secretariat has begun publishing some meeting schedules, rulings, and documents related to trade disputes on its website. Despite such moves, however, the WTO decision-making process remains essentially exclusive. Negotiating agendas, which detail the areas of global trade that will be targeted during talks, are formed in a process that generally excludes both domestic interests and many of the organization’s own lesser-developed member states. Participation in the formation of rules is limited to member-state delegations, and again, often only to a core of delegations in closed negotiations. In most cases, parliamentarians and

other representatives of domestic constituencies are not formally empowered to receive information or offer input as specific trade rules take shape during negotiations, especially in states outside the core WTO “quad” of the United States, the European Union, Canada, and Japan. Finally, though the standing WTO Appellate Body has affirmed its own powers to accept amicus briefs in specific disputes, there is no routinized procedure by which groups within states may submit such briefs. Nor, with some few exceptions, has access to hearings in dispute proceedings been permitted outside of disputant states’ delegations—a key point for many, given that the WTO dispute system is the most clearly supranational aspect of the organization’s governance, where it has relatively strong powers to obtain compliance from member states through the threat of trade penalties.

ARGUMENTS AGAINST BROADER REPRESENTATION

Defenders of the status quo claim that opening the organization’s doors could lead to more powerful protectionist pressures, especially from the domestic “losers”—that is, producers who would face greater competition from overseas rivals under trade liberalization. The organization has been effective in promoting liberalization, they argue, because it has provided a venue in which member-state delegations are able to resist pressures from organized producer lobbies, as well as broader labor sectors, motivated to act in their own short-term, rent-seeking interests. A club model enables trade elites to act in the more general public interest, securing for their states the lower-priced goods and economic efficiency gains that trade liberalization produces. As Fiona McGillivray argues,

Opening the WTO process to greater participation won’t necessarily make the WTO more democratic. There are more winners than losers from free trade, but because the costs and benefits are distributed unevenly, only the losers face strong incentives to organize and lobby the WTO. Most trade lobbyists seek protection, not open markets.¹⁰

Thus, the argument goes, WTO negotiations should continue to be insulated from voices outside the executive-branch trade delegations representing their respective member states. That includes forms of direct participation by parliamentarians within member states, who are seen as more susceptible to interest-group capture, given the relatively small geographic areas they represent and the direct influence that some local producer, labor, and other lobbies are expected to exert on them.¹¹ Liberalization is presumed to be a political tough sell; though

it may clearly be in the economic interest of a country overall, the local pains—job losses in particular—and resulting pressures it can produce make it difficult for even strongly supportive elective officials to persuade their local constituencies of its benefit. As the organization itself states, “The WTO system offers governments a means to reduce the influence of narrow vested interests. . . . The outcome of a trade round has to be a balance of interests. Governments can find it easier to reject pressure from particular lobbying groups by arguing that [they] had to accept the overall package in the interests of the country as a whole.”¹²

Influence on the WTO negotiations themselves is said to be appropriately exercised only through a principal-agent chain of delegation, beginning with citizens of states, extending to their trade delegations and the negotiating tables. Kent Jones and some other WTO defenders are not opposed to participation for nongovernmental organizations in limited roles—for example, in disseminating information to trade delegations ahead of negotiations, and possibly in submitting *amicus curiae* briefs in some dispute-resolution proceedings. They argue, however, that it would be inappropriate, as well as highly impractical, to attempt to formalize NGO representation, and by extension parliamentary representation, in actual negotiations.¹³

THE CLUB MODEL AND COMPETITIVE ELITISM

Some scholars have argued that it would be likewise inappropriate to presume that democratic principles and practices can be exported from the domestic to the regional or global level. They maintain that there simply are fundamental differences between the democratic potential within a relatively cohesive nation-state and the potential for shared rule above the state.¹⁴ Such critiques generally do not give sufficient consideration to the ways in which particular aspects of democratic practice can be appropriately transformed and transferred to a supranational body. More salient here, they fail to address ways in which policy formation in a body such as the WTO already resembles a long-standing and still-influential approach to democratic practice: Joseph Schumpeter’s competitive elitism.¹⁵ Competitive elitism is concerned almost solely with outputs, both electoral outputs and the policy outputs that determine electoral success or failure for particular parties. It gives little emphasis to democratic inputs or mechanisms for public participation in the policy-making process.¹⁶ In fact, in

Schumpeter's formulation, policy-makers are to be insulated from public or interest group pressures, in order to allow them to act in the interests of the polity as a whole, rather than of the most vigorous or otherwise most influential interests. Thus, they are not to be barraged by telegrams, letters, and other forms of direct lobbying on specific issues. As David Held observes, in this approach, "the role of ordinary citizens is not only highly delimited, but it is frequently portrayed as an unwanted infringement on the smooth functioning of 'public' decision making."¹⁷

In competitive elitism, if elites' policy outputs should stray too far from the preferences of the majority public, they or their parties are expected to be subjected to the disciplining mechanism of electoral loss. The public plays a small role beyond periodic voting, however. Thus, there are clear surface similarities to the club model, where elites strictly control public participation in the process and the public is left to judge outputs presented as a finalized, comprehensive package. The WTO club model might actually be characterized as noncompetitive elitism, though, because competition for public support of discrete party programs is mostly lacking within it. Opposition elites face significant exclusions at the supraparty level, as discussed below, and the kinds of disciplining mechanisms expected to operate in competitive elitism are significantly attenuated in a club model, where information about the formation of rules and their potential impacts is more limited.

At a more foundational level, competitive elitism and the club model share a feature that goes to the heart of accountability debates in global governance—that is, both display some mistrust of a democratic polity's capacity to act according to its own rational, long-term interests. The dynamic is stark within classic competitive elitism. In justifying limited public participation, Schumpeter cites in particular most citizens' poor information on key issues.¹⁸ He argues that they can be expected to make rational decisions on clear pocketbook issues, but the rationality employed will be of a narrow, self-interested kind, in contrast to the more broad-minded rationality that elites employ. In a similar vein, defenders of a WTO club model consistently emphasize that free trade is a hard sell. When it comes to liberalization, it is difficult to persuade a polity to do what is in its own best economic interests over the long term. As noted above, the "losers" from liberalization tend to be concentrated in certain industries or economic sectors and are considered more likely to mobilize in favor of specific protections than the more dispersed "winners," even though liberalization is presumed to be clearly in

the national interest.¹⁹ Thus, the voice that emerges from the polity is likely to be one speaking on behalf of a short-term, self-interested rationality limited to a relatively narrow group. In order to overcome protectionist pressures from such groups, negotiations for trade liberalization ostensibly must be conducted at a remove from direct public input, where the influence of special interests will be mitigated, and where collectively rational policy choices can be pursued.²⁰

The most damaging critique of the collective-irrationality assumption in competitive elitism can be applied with some force to the argument for exclusive WTO governance. Why, critics have asked of competitive elitism, if citizens are so limited in their collective rationality, should we presume that they can be entrusted with the selection of their own leaders? Why allow even that exercise in popular rule, which arguably has the most significant potential consequences of any choice a polity can make?²¹ Likewise, if the trade delegates appointed by democratic states within a club model are to be insulated from public input so that they can better act in the public's own economic good, why should not a range of other governance areas be removed from direct public input or special-interest pressures as well? Surely such areas as taxation and redistribution policy might be more efficiently managed if insulated from the rent-seeking and other endemic pressures of domestic democracy.

Critics of competitive elitism have persuasively argued that the appropriate response to a lack of information and the related problems that can contribute to shortsighted democratic governance is not to undercut democracy itself. Rather, such issues can be addressed through providing citizens with better access to information and political education and encouraging more robust and varied forms of participation and representation. Similarly, greater information and participation are appropriate remedies for the challenges identified by defenders of exclusionary WTO governance. In fact, it has been common for political elites to work vigorously to "sell" trade liberalization agreements to the public when such agreements are under consideration. For example, in 1993, shortly before the U.S. Congress was to vote on the final passage of the North American Free Trade Agreement, then U.S. vice president Al Gore engaged in a televised debate on the measure with the prominent NAFTA opponent Ross Perot. In an inspired rhetorical moment, Gore gave Perot a framed portrait of U.S. congressmen Reed Smoot and Willis Hawley, the primary sponsors of a protectionist 1930 trade act that has been blamed for prolonging the global Depression. NAFTA went on to win approval in Congress, after public opinion had gradually shifted in its favor.

That shift was attributed by some observers to the vigorous information and public relations campaign staged by the Clinton administration, and it has been held up as an instance of a “rational public” emerging on a foreign policy issue.²² The episode helps to demonstrate that rather than viewing a retreat to supraprivate elite policy formation as the only feasible response to potential collective economic irrationality induced by a narrow protectionism, elites can respond by providing public outreach and education in efforts to actually persuade the potential beneficiaries of liberalization.

This is not to suggest that some form of fully populist direct democracy is the appropriate end response. There may be justifications for very gradual inclusion, or for continuing exclusiveness or opacity in some narrow range of policy processes at the supraprivate level, as is common in domestic democratic practice. Relatively comprehensive, ongoing exclusion of public input into actual policy formation is not readily justified by reference to the public economic interest, however, especially in a mature forum such as the nearly sixty-year-old GATT/WTO.

Finally, WTO trade negotiators are not as insulated from lobbying pressures as the standard characterization of the club model would suggest. Select domestic interest groups continue to exercise significant influence in WTO governance. Persistently high tariffs and subsidies for agricultural goods, especially in developed states, are an oft-cited example of producer influence.²³ In fact, the continuing ability of farm lobbies in developed states to obtain trade-distorting agricultural subsidies was cited as the primary reason for the suspension of trade talks under the WTO’s Doha Round in July 2006.²⁴ Another example is the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs). Even staunch WTO defenders, such as Jagdish Bhagwati and Kent Jones, are highly critical of the influence that export producers were able to exercise in seeing TRIPs written into trade rules.²⁵ It is not suggested here that the organization serves as a mere transmission belt for export-producer interests in developed states. Such examples do suggest, however, that the WTO club model only partially insulates elites, and that the interests of some rent-seeking producers are represented much more robustly at negotiating tables than the interests of other societal groups.

DEMOCRATIC SYMMETRY

The changes recommended here are not some narrowly focused set of reforms designed to reduce the influence of producer lobbies at the supraprivate level, but

more comprehensively inclusive reforms guided by a principle of democratic symmetry. Such a principle holds that individuals should be able to influence policy formation in proportion to the impact or potential impact the policy will have on their lives.²⁶ The concept of symmetry is familiar in current liberal democracies, where individuals and groups have various means available to give input on, and in some circumstances formally contest, legislative or administrative proposals. Parliamentary committees routinely make specific provisions to take testimony from potentially affected parties, individuals may directly petition lawmakers and bureaucratic rule-makers, and potentially affected groups may submit amicus briefs to juridical bodies in routinized procedures.²⁷ A similar input principle, known as a “right to a fair hearing,” is recognized by the EU. In a 1974 decision addressing the powers of the European Commission to impose sanctions and other penalties directly on individuals in unfair-competition cases, the European Court of Justice ruled that “a person whose interests are perceptibly affected by a decision taken by a public authority must be given the opportunity to make his point of view known.”²⁸ The court has since ruled that individuals who might themselves be sanctioned in competition cases also have rights of access to the information or documents on which the Commission’s decision will be based, significantly enhancing the transparency of the decision-making process.²⁹

I do not claim here that democratic symmetry is fully realized in any domestic system or the European Union. The influence of monetary contributions and well-connected lobbyists, for example, can introduce numerous input asymmetries. The ability of individuals and groups to form their own interest-based lobbies and attempt to influence policy, however, or to press for formal checks on the kinds of influence that can be exercised on the process, is an important potential counterbalance.³⁰ Formal input mechanisms allow individuals to first identify and publicize the set of interests they *themselves* consider to be vital, and then to attempt to promote and protect those interests through participation in open fora. Emphasis on the defensive nature of input principles of democracy dates at least to John Stuart Mill’s oft-cited claim that “the rights and interests of every or any person are only secure from being disregarded when the person interested is himself able, and habitually disposed, to stand up for them.”³¹ Democratic theorists such as Charles Beitz, Robert Goodin, and Ian Shapiro continue to focus on the ways in which enabling inputs can help to publicize and promote the interests of groups within society, especially potentially marginalized groups.³² Shapiro in particular discusses an “insider’s wisdom” in the domestic context. It is the special knowledge

of a situation, role, or set of practices that only those embedded in the role can fully appreciate and relate to others.³³ Those outside the specific role or social situation may have misconceptions about it that can be dispelled through dialogue with insiders. In the WTO context, such insider's wisdom could be crucial in bringing to light some potentially harmful, or at least far-ranging, impacts of the organization's increasingly broad rule-making powers, as discussed below.³⁴

While the specific kind of input principle offered here is justified in part by its role in enabling individuals to protect their interests, democratic symmetry is primarily a deontological, rather than consequentialist, principle. That is, it is not defended primarily by reference to some set of efficient correlations between individual preferences and trade negotiations, or other outcomes that could be produced, were it adopted. Indeed, there are no guarantees that outcomes would always be more efficient or productive of some aggregate economic good under the operation of democratic symmetry or some related input principle. Nor will more equitable input *necessarily* lead to equitable political outcomes, whether in the distribution of ruling power or specific material goods. Rather, democratic symmetry is grounded in a fundamental concern with equal respect for individuals, expressed as political equality. To deny individuals the opportunity to provide input on those policies that have significant impacts on their lives is to severely limit their ability to contribute to various forms of public deliberation about what they actually perceive their own good to be, to treat them fundamentally as subjects of rule rather than coproducers of it. I will note also that democratic symmetry shares some features with deliberative democracy. Both approaches place significant emphasis on creating inclusive spaces in the policy process in which ideas and information can be exchanged.³⁵ Democratic symmetry is not fundamentally or solely a deliberative principle, however. It gives relatively less emphasis to the developmental and other ameliorative effects of deliberation itself, and more to the importance of enabling individuals to give substantive input on specific policy formation. Thus, under a symmetry approach, more formally constituted checks on governing power might be advocated than under a primarily deliberative approach.³⁶

DEMOCRATIC SYMMETRY AND WTO GOVERNANCE

The body of World Trade Organization rules has been characterized by even sympathetic observers as effectively a constitution for global commerce, one that

is reaching ever deeper into domestic regulation and governance.³⁷ Consider the following from the Parliamentary Conference on the WTO, which has involved lawmakers from scores of states and regional bodies. As noted above, for several years the conference has been pressing for a greater inclusion of legislative voices in WTO governance. In the Final Declaration of its 2003 conference in Geneva, the group asserted that,

The WTO is rapidly becoming more than a mere trade organisation. Unlike most international treaties, WTO agreements not only bind nations with regard to the definition of common objectives, but also provide for their enforcement through an effective dispute settlement mechanism. The WTO's decisions have a growing impact on services, utilities, intellectual property rights, government procurement, public health, education, employment, food safety and the environment, as well as the management of natural resources such as forests, fisheries and water.

Numerous trade and international law scholars also have noted the increasing breadth of WTO regulation and the penetration of the organization's rules into areas formerly reserved to domestic policy-makers. For example, Gopal Sreenivasan has detailed how the rules and procedures still emerging under the WTO's General Agreement on Trade in Services (GATS) effectively require states to maintain a minimum degree of privatization in domestic health care systems.³⁸ Likewise, the GATS has had broad significance for such issues as water-use regulation and the preservation of water quality in member states worldwide, even when administered at the very local level.³⁹ More generally, WTO dispute and appellate panels routinely issue decisions that have direct effect on domestic policy areas. Initial accession to WTO membership itself can cause significant dislocations in domestic labor markets, agriculture, and other sectors.⁴⁰

WTO rules on intellectual property have been cited in particular for their broad impacts and implications. The TRIPs agreement essentially required all WTO member states to change their own laws and practices to comply with new global standards for protecting patents, trademarks, and other intellectual property. In states such as India, where patent protections on pharmaceutical products were formerly quite limited, and where production by "reverse engineering" of such products was common, the long-term impact from the country's 2005 compliance with the agreement was expected to be quite significant.⁴¹ In fact, WTO negotiators themselves have acknowledged the impacts of TRIPs and have revised the rules on patented drugs for diseases such as AIDS in developing states. Critics complained that TRIPs could be a death warrant for huge numbers

of HIV/AIDS patients who had been undergoing treatment with relatively low-cost generic drugs. The agreement was provisionally modified in 2003 to allow the distribution of generic copies of the drugs in some cases.⁴²

Some supporters of a club model do argue that increasing WTO impacts should prompt some changes in WTO governance, though not in the direction of including parliamentarians or otherwise creating formal participation mechanisms. Rather, they suggest that some of the impacts on member states mentioned above should be compensated, especially if they are felt deeply in less-developed states. Bhagwati has been perhaps the most vigorous promoter of this kind of compensation. One case he cites is the WTO Appellate Body's 1997 decision to bar the preferential banana-import treatment given by European Union states to some of their former Caribbean colonies. He decries the lack of compensation in that case as an example of the WTO acting with "reckless regard" for the economies of the developing states, which were ill equipped to withstand the shock of the relatively sudden rules change.⁴³ Jones, in part as a response to such impacts on developing states, advocates the creation of "clubs within the club," or rotating steering committees of member states. Such committees would allow "WTO members with common interests on any given issue at stake in the meetings to enjoy the appropriate level of representation."⁴⁴

Note the similarity to a principle of democratic symmetry. Jones is concerned with providing the appropriate kinds and levels of input to those who stand to feel the impacts of policy changes. The continuing exclusions of developing states from agenda setting, core negotiations, and other aspects of WTO governance indeed should raise significant concerns about fairness and representation. The door has been cracked open to some more powerful developing countries on specific negotiations, but the exclusion of especially the lesser developed of the developing countries remains the norm in negotiations. In the increasingly important "mini-ministerials" held before full trade talks, it is generally only the most economically powerful WTO members that meet to set negotiation agendas. At full-scale trade talks, such as the November 2001 ministerial in Doha, Qatar, developing-country trade ministers have reported an inadequate provision of translators during negotiations, including from English to such widely spoken languages as Spanish and French. They have complained that they are unable to adequately staff some important meetings from their small delegations because of overlapping sessions and the marathon character of some talks. Some have even reported being kept waiting in

hallways while key, late-stage negotiations were conducted with a core of about two dozen delegations.⁴⁵

Steering committee proposals offered by Jones and others would ensure at least some representation at key negotiating sessions for developing countries.⁴⁶ Similar to bodies operating within the World Bank and the International Monetary Fund, such committees would be composed of members according to trade volume or some other characteristic that would reserve seats for the most prominent trading states, while also providing for geographically based representation.

A sole focus on such internal reforms, as in Jones's account, however, presumes that states, in particular their executive negotiating delegations, are the only entities with legitimate standing in the WTO. Many domestic interests affected by WTO rules see their interests only weakly represented within trade delegations, which are appointed by, and primarily represent the interests of, the dominant domestic political coalition. Within the current WTO framework, there are no mechanisms to ensure that domestic civil society critics, or indeed the voice of the formal domestic opposition, will be heard at the suprastate level.⁴⁷ Further, more direct participation by those outside of executive delegations would help to address concerns about information asymmetries between negotiators and domestic lawmakers. As Robert Howse notes, even if the governing coalition or party must seek final approval from a domestic parliamentary body for a package of trade rules negotiated in the WTO, the executive account of how and why delegates agreed to particular rules in the process of negotiation can be difficult to verify independently.⁴⁸ Even in the United States, where Congress has a range of formal oversight powers on trade policy, actual influence can be highly attenuated. As former U.S. Representative David Skaggs notes, "unlike most issues in the U.S. constitutional system of divided legislative-executive power, there is no real opportunity for a legislator to practice the legislative craft on trade bills. It is simply a 'yes' or 'no' vote on a bill that the executive has primarily shaped."⁴⁹

CREATING A FORMAL WTO PARLIAMENTARY BODY

Beginning with the 1999 Seattle meeting, where a group of 120 issued a declaration calling for the creation of a standing WTO parliamentary body, parliamentarians have been vigorous and persistent in their calls for greater inclusion. Their efforts have gained at least limited recognition from the WTO secretariat and member states. WTO directors general have participated as speakers and

moderators in various parliamentary conferences, as have trade ministers from the United States, the European Union, Japan, and other powerful states. The WTO also has staged large-scale informational workshops for parliamentarians, in conjunction with the Commonwealth Parliamentary Association. The WTO stance on a more formal integration of parliamentarians, however, could be well summed up in Lamy's June 2006 reminder to the conference steering committee that "any greater involvement . . . will require consensus amongst WTO Members, since as you know, the WTO is a member-driven organization."⁵⁰ Such a requirement makes even strong WTO parliament advocates, such as the Thai parliamentarian Kobsak Chutikul, reject as futile any proposals aiming to create a body that could, in the near term, exercise some rules oversight or other powers analogous to domestic legislative bodies.⁵¹

Certainly the prospects would seem dim for achieving consensus from all WTO members in the near term. Even so, there are many steps that can be taken to both increase parliamentarians' influence and increase pressure on the organization to ultimately authorize a standing body. As Chutikul and others note, the informal WTO Parliamentary Conference could play a greater role in monitoring WTO rules formation and other activities, as well as engaging in dialogue with executive-body trade delegations. Further, the emerging transnational networks of parliamentarians in the Parliamentary Conference could become more integral to the transnational professional networks that have emerged around the WTO and other global governance institutions in recent years. These mostly informal networks of ministers, regulators, and jurists are increasingly significant in promoting cooperation and the sharing of information and other resources among states.⁵² Participation in such professional networks would help to increase the competence of Parliamentary Conference members on trade issues, enabling them to exercise closer domestic scrutiny at the various stages of negotiations. It also could provide informal channels of input for parliamentarians in presenting the views of potentially excluded groups within their states. A vital next step would be to move toward a more formal and representative structure for the Parliamentary Conference, even as it remains formally excluded from the WTO. The conference could include representatives chosen from each WTO member state, as well as a steering committee chosen from the full body. The conference's current, more ad hoc steering committee can serve as a partial model. Further, if a standing WTO steering committee were formed along the lines suggested by Jones and others, it could be expected to hold

regular meetings with the parliamentary steering committee and provide opportunities for more informal consultation or cooperation.

I do not suggest that individuals within democratic WTO member states possess a categorical right to discover, through their elected representatives, the substance and dialogue of all WTO negotiations, adjudication, and other activities. It is not uncommon even within states considered to be robust democracies for citizens to be excluded from some aspects of governance. For example, in the United States, cabinet-level administration deliberations are not made public, and the transcripts of deliberations by the Supreme Court are not released. In the WTO context, as is routine in many domestic systems, parliamentarians could take part in closed briefings with negotiators about sensitive issues, still providing input from their various constituencies, but observing confidentiality on those highly sensitive issues where it might be justified. Parliamentarians also could provide important ongoing pressures for openness and transparency, helping to ensure that off-the-record proceedings are relatively rare and appropriately limited in scope.

Though the full inclusion of parliamentarians is advocated here, I do not call for the formal inclusion of nongovernmental organizations in WTO rule-making. Organizations such as Oxfam, Global Trade Watch, and Third World Network have provided significant alternative voices on global trade governance, and some commentators have suggested that their roles as information providers and global gadflies should be formalized, whether on trade delegations, inside a WTO assembly, or by other means.⁵³ NGOs themselves, however, do not necessarily conform to the standards of transparency and accountability that are demanded of international organizations. Many also represent relatively narrow segments of domestic societies, and they tend to be concentrated in the global North. For these reasons, NGOs are not recommended as the formal representatives of affected constituencies within states. In a more inclusive WTO governance system, however, they still could play important roles as accredited members of parliamentary advisory boards, speakers at open hearings, and as sources of independent research and information for WTO parliamentarians, delegations, and dispute-resolution panels.

In the longer term, we should want to see the creation of a WTO parliamentary assembly that would exercise some robust powers of codecision in the organization's governance. Specific powers could include a confirmation role in the selection of new directors general and members of the WTO Appellate Body.

Parliamentarians also would appropriately contribute to budgetary oversight, including on WTO secretariat staffing levels, and in providing technical assistance in compliance and dispute-resolution matters for developing states. Ultimately, we should want to see parliamentary codecision approximate that practiced in the still-evolving European Union system. The European Parliament has seen its representation and delegated powers grow with the deepening of European economic integration and concerns about a “democratic deficit,” where the input of ordinary individuals into suprastate regional governance is presumed to have fallen far short of its impacts.⁵⁴ Members have been directly elected by citizens of EU member states only since 1979. Since then, however, the Parliament has been transformed from primarily a consultative body with few formal governance powers, to a body exercising some powers of “cooperation,” or greater inclusion in the scrutiny and acceptance of proposed legislation, to one possessing formal powers of codecision—approval or rejection—with the Council of Ministers over approximately three-quarters of EU-wide legislation proposed.⁵⁵ The Parliament also exercises significant budgetary powers, and now possesses a veto power over the selection of the European Commission president.

The enhancement of European Parliament powers has not, of course, addressed all the concerns about accountability and transparency in EU governance, and I do not suggest that the European model can be adopted wholesale for the WTO. Key aspects of EU evolution certainly can inform a discussion about the possibilities for a more representative WTO, however, especially as WTO-regulated trade continues to expand. As Alec Stone Sweet, Wayne Sandholtz, James Caporaso, and others have detailed, increases in trade and other transstate exchanges facilitated by economic integration projects tend to create movement toward deeper integration, especially via dispute-resolution procedures. As cross-border economic activity intensifies and expands, formally adjudicated disputes increase in number, and system-wide precedents are set by dispute bodies, as in the “fair hearing” case noted above.⁵⁶ As the body becomes more integrated and its governance reach expands and deepens, affected actors tend to press more vigorously for inclusion in formal decision-making procedures. We can already see this happening in the WTO. Developing states are demanding greater inclusion in negotiations and have been increasingly vocal about their displeasure with developed states’ slow movement toward reducing agricultural subsidies, among other issues. In response to such demands, it seems likely that a member-state steering committee will be created, or that the WTO

will take some other formal steps to better incorporate developing-state voices. More significantly, continuing pressure for more accountability and transparency in WTO rule-making can be expected from affected actors within member states—notably, the street protesters and NGOs whose actions have provoked global debate about WTO governance and have helped trigger even the limited moves toward openness noted above.

Ideally, such pressure can be channeled into calls for inclusion and robust representation, rather than into blunt “nix it” campaigns of resistance to virtually all trade liberalization. Such resistance campaigns, in conjunction with a potential backlash or defections from developing states, could indeed have the potential to “kill” the WTO goose. That is an outcome that defenders of the club model would do well to keep in mind as they consider ways to help the organization realize its promise for promoting genuinely beneficial trade liberalization. The creation of a formal WTO parliamentary assembly, even if only consultative at first, would amplify the voice of global civil society in trade negotiations considerably, providing new avenues of access and some influence. It would make the concerns of those within WTO member states more visible, enabling them to more effectively share their insider’s wisdom and better publicize and protect their vital interests. The gradual strengthening of a WTO assembly, with the longer-term goal being the creation of a body that could exercise codecision powers roughly analogous to those of the current European Parliament, would go some way toward fully matching input to impact in WTO governance.

NOTES

¹ Pascal Lamy, “What Are the Options After Seattle?” (speech to the European Parliament, Brussels, January 25, 2000); available at europa.eu.int/comm/archives/commission_1999_2004/lamy/speeches_articles/sp1ao9_en.htm. See also Erika Mann, “A Parliamentary Dimension to the WTO—More Than Just a Vision?” *Journal of International Economic Law* 7, no. 3 (2004), p. 662.

² Pascal Lamy, “Opening Address, Twelfth Session of the Steering Committee—Parliamentary Conference on the WTO” (Geneva, June 22, 2006); available at www.wto.org/english/news_e/sppl_e/sppl30_e.htm.

³ Jagdish Bhagwati, *In Defense of Globalization* (New York: Oxford University Press, 2004); Kent Jones, *Who’s Afraid of the WTO?* (New York: Oxford University Press, 2004); Fiona McGillivray, “Democratizing the World Trade Organization,” Hoover Institution Essays in Public Policy No. 105 (October 2000); and Mike Moore, *A World Without Walls: Freedom, Development, Free Trade and Global Governance* (Cambridge: Cambridge University Press, 2003).

⁴ See Gregory Shaffer, “Parliamentary Oversight of WTO Rule-Making: The Political, Normative, and Practical Contexts,” *Journal of International Economic Law* 7, no. 3 (2004), pp. 629–54; Americo Beviglia Zampetti, “Democratic Legitimacy in the World Trade Organization: The Justice Dimension,” *Journal of World Trade* 37, no. 1 (2003), pp. 105–26; and Kobsak Chutikul, “Options for a Parliamentary Dimension of the WTO,” Parliamentary Conference on the WTO (February 18, 2003); available at www.ipu.org/splz-e/trade03/2c.pdf.

⁵ Robert O. Keohane and Joseph Nye, “Between Centralization and Fragmentation: The Club Model of Multilateral Cooperation and Problems of Democratic Legitimacy,” Kennedy School of Government Faculty Research Working Paper No. 01-004 (February 2001); available at papers.ssrn.com/paper.

- ta?abstract_id = 262175; and Alec Stone Sweet, "The New GATT: Dispute Resolution and the Judicialization of the Trade Regime," in Mary Volcansek, ed., *Law Above Nations: Supranational Courts and the Legalization of Politics* (Gainesville, Fla.: University Press of Florida, 1997), p. 118.
- ⁶ Keohane and Nye, "Between Centralization and Fragmentation"; and Sweet, "The New GATT," in Volcansek, ed., *Law Above Nations*, pp. 118–41.
 - ⁷ See Ruth W. Grant and Robert O. Keohane, "Accountability and Abuses of Power in World Politics," *American Political Science Review* 99, no. 1 (2005), p. 31.
 - ⁸ See Jackie Smith, "Globalizing Resistance: The Battle of Seattle and the Future of Social Movements," *Mobilization* 6, no. 1 (2001), pp. 1–19; on the broadening of some delegations, see Brian Hocking, "Changing the Terms of Trade Policy Making," *World Trade Review* 3, no. 1 (2004), pp. 3–26.
 - ⁹ Eric Stein, "International Integration and Democracy: No Love at First Sight," *American Journal of International Law* 95, no. 3 (2001), pp. 505–06.
 - ¹⁰ McGillivray, "Democratizing the World Trade Organization," p. 2. Such mobilization dynamics were highlighted in the seminal work by Mancur Olson, *The Logic of Collective Action* (Cambridge: Harvard University Press, 1971); see also Jagdish Bhagwati, *Free Trade Today* (Princeton: Princeton University Press, 2002), p. 48; and Jones, *Who's Afraid of the WTO?*, chap. 2.
 - ¹¹ McGillivray, "Democratizing the World Trade Organization," pp. 7–9; see also Moore, *A World Without Walls*, pp. 120–21.
 - ¹² World Trade Organization, "Ten Common Misunderstandings About the WTO: The WTO is *Not* the Tool of Powerful Lobbies"; available at www.wto.org/english/thewto_e/whatis_e/tomato8_e.htm.
 - ¹³ Jones, *Who's Afraid of the WTO?*, pp. 180–82; and Moore, *A World Without Walls*, p. 201.
 - ¹⁴ Robert Dahl, "Can International Organizations be Democratic? A Skeptic's View," in Ian Shapiro and Casiano Hacker-Cordon, eds., *Democracy's Edges* (Cambridge: Cambridge University Press, 1999), pp. 19–36; see also Giandomenico Majone, *Dilemmas of European Integration* (Oxford: Oxford University Press, 2005), chap. 2.
 - ¹⁵ Joseph Schumpeter, *Capitalism, Socialism and Democracy*, 3rd ed. (New York: Harper & Row, 1962); John Medearis, *Joseph Schumpeter's Two Theories of Democracy* (Cambridge: Harvard University Press, 2001); and Ian Shapiro, *The State of Democratic Theory* (Princeton: Princeton University Press, 2003).
 - ¹⁶ See Robert E. Goodin, *Reflective Democracy* (New York: Oxford University Press, 2003), chap. 5; and Andrew Kuper, *Democracy Beyond Borders: Justice and Representation in Global Institutions* (New York: Oxford University Press, 2004), pp. 96–100.
 - ¹⁷ David Held, *Models of Democracy*, 2nd ed. (Stanford, Calif: Stanford University Press, 1995), p. 198.
 - ¹⁸ Schumpeter, *Capitalism, Socialism and Democracy*, pp. 260–64.
 - ¹⁹ Jones, *Who's Afraid of the WTO?*, p. 37; see also McGillivray, *Democratizing the World Trade Organization*, p. 2.
 - ²⁰ Andrew Moravcsik, "Is There a 'Democratic Deficit' in World Politics? A Framework for Analysis," *Government and Opposition* 39, no. 2 (2004), p. 344; available at www.princeton.edu/~amoravcs/library/framework.pdf. See also Jones, *Who's Afraid of the WTO?*, p. 199.
 - ²¹ Jose Nun, *Democracy: Government of the People or Government of the Politicians?* David Haskell and Guillermo Haskell, trans. (Lanham, Md.: Rowman & Littlefield, 2003), p. 15; Peter Bachrach, *The Theory of Democratic Elitism* (New York: Little, Brown, 1967); and Held, *Models of Democracy*, pp. 193–94.
 - ²² Eric M. Uslaner, "Trade Winds: NAFTA and the Rational Public," *Political Behavior* 25, no. 4 (1998), pp. 341–60.
 - ²³ Bhagwati, *In Defense of Globalization*, p. 232; and Gregory C. Shaffer, "The World Trade Organization Under Challenge: Democracy and the Law and Politics of the WTO's Treatment of Trade and Environment Matters," *Harvard Environmental Law Review* 25, no. 1 (2001), pp. 52–55.
 - ²⁴ Steven R. Weisman and Alexei Barrionuevo, "Failure of Global Trade Talks is Traced to the Power of Farmers," *New York Times*, July 27, 2006, p. A-1.
 - ²⁵ Bhagwati, *In Defense of Globalization*, p. 83; see also Darrel Moellendorf, "The World Trade Organization and Egalitarian Justice," *Metaphilosophy* 36, nos. 1–2 (2005), pp. 145–62.
 - ²⁶ See also Inge Kaul, Pedro Conceicao, Katell Le Goulven, and Ronald U. Mendoza, *Providing Global Public Goods: Managing Globalization* (New York: Oxford University Press, 2003), pp. 27–28; and David Held, *Global Covenant: The Social Democratic Alternative to the Washington Consensus* (Cambridge: Polity Press, 2004), chap. 6.
 - ²⁷ On briefs allowed in some WTO dispute cases, and resistance to the practice by some member states, see Robert Howse, "Membership and Its Privileges: The WTO, Civil Society, and the Amicus Brief Controversy," *European Law Journal* 9, no. 4 (2003), pp. 496–510; and David A. Wirth, "International Decisions, European Communities—Measures Affecting Asbestos and Asbestos-Containing Products," *American Journal of International Law* 96, no. 2 (2002), pp. 438–39.

- ²⁸ The case, 17/74, *Transocean Marine Paint Association v. Commission*, 1974 ECR 1063, is discussed in the context of the right to a fair hearing in Francesca Bignami, "Three Generations of Participation Rights in European Administrative Proceedings," *Law and Contemporary Problems* 68, no. 1 (2005), pp. 61–83.
- ²⁹ Bignami, "Three Generations of Participation Rights," pp. 64–65.
- ³⁰ See Richard Briffault, "Public Funding and Democratic Elections," *University of Pennsylvania Law Review* 148, no. 2 (1999), pp. 563–90.
- ³¹ John Stuart Mill, *Considerations on Representative Government*, Currin V. Shields, ed. (Indianapolis, Ind.: Bobbs-Merrill, 1958), p. 43.
- ³² Charles Beitz, *Political Equality: An Essay in Democratic Theory* (Princeton: Princeton University Press, 1989); Goodin, *Reflective Democracy*; and Shapiro, *The State of Democratic Theory*, pp. 52–55. Shapiro defends a version of competitive elitism augmented by input mechanisms as the best means of reducing domination in societies; see also Robert Dahl, *Democracy and Its Critics* (New Haven: Yale University Press, 1989), pp. 100–101.
- ³³ Shapiro, *The State of Democratic Theory*, pp. 39–43.
- ³⁴ See Charles Beitz, "Cosmopolitanism and Global Justice," *Journal of Ethics* 9, nos. 1–2 (2005), p. 24.
- ³⁵ Loren King, "Deliberation, Legitimacy, and Multilateral Democracy," *Governance* 16, no. 1 (2003), p. 43; Ilan Kapoor, "Deliberative Democracy and the WTO," *Review of International Political Economy* 11, no. 3 (2004), pp. 522–41; Zampetti, "Democratic Legitimacy in the World Trade Organization"; and Patrizia Nanz and Jens Steffek, "Global Governance, Participation and the Public Sphere," *Government and Opposition* 39, no. 2 (2004), pp. 314–35.
- ³⁶ On deliberative democracy versus "checks and balances" liberal constitutional democracy, see Shapiro, *The State of Democratic Theory*, p. 58; on possible supranational checks, see Anne-Marie Slaughter, "Disaggregated Sovereignty: Towards the Public Accountability of Global Government Networks," *Government and Opposition* 39, no. 2 (2004), pp. 159–90.
- ³⁷ John O. McGinnis and Mark L. Movsesian, "The World Trade Constitution," *Harvard Law Review* 114, no. 2 (2000), pp. 511–605.
- ³⁸ Gopal Sreenivasan, "Does the GATS Undermine Democratic Control Over Health?" *Journal of Ethics* 9, nos. 1–2 (2005), pp. 269–81.
- ³⁹ Elizabeth Tuerk, Aaron Ostrovsky, and Robert Speed, "GATS and its Impact on Participation in Private Sector Water Services," in Edith Brown Weiss, Laurence Boisson de Chazournes, and Nathalie Bernasconi-Osterwalder, eds., *Fresh Water and International Economic Law* (New York: Oxford University Press, 2005), pp. 143–72.
- ⁴⁰ Xiao-shan Zhang, "The Impact of China's Accession to the WTO on Chinese Agriculture and Farmers," in Hung-Gay Fung, Changhong Pei, and Kevin H. Zhang, eds., *China and the Challenge of Economic Globalization: The Impact of WTO Membership* (Armonk, N.Y.: M. E. Sharpe, 2006), p. 273–81; see also Dani Rodrik, *Has Globalization Gone Too Far?* (Washington, D.C.: Institute for International Economics, 1997), pp. 4–7.
- ⁴¹ See Moellendorf, "The World Trade Organization and Egalitarian Justice," p. 156; see also Jayashree Watal, "Pharmaceutical Patents, Prices and Welfare Losses: Policy Options for India Under the WTO TRIPs Agreement," *World Economy* 23, no. 5 (2000), pp. 733–52.
- ⁴² Sean D. Murphy, "Contemporary Practice of the United States Relating to International Law: Modification of WTO Rules on Protection of Pharmaceuticals," *American Journal of International Law* 97, no. 4 (2003), pp. 981–83; see also Haochen Sun, "Reshaping the TRIPs Agreement Concerning Public Health: Two Critical Issues," *Journal of World Trade* 37, no. 1 (2003), pp. 163–97.
- ⁴³ Jagdish Bhagwati, *The Wind of the Hundred Days: How Washington Mismanaged Globalization* (Cambridge, Mass.: MIT Press, 2000), pp. 203–04.
- ⁴⁴ Jones, *Who's Afraid of the WTO?*, p. 163.
- ⁴⁵ Fatoumata Jawara and Aileen Kwa, *Behind the Scenes at the WTO: The Real World of International Trade Negotiations* (London: Zed Books, 2004), pp. 99–111; see also Keohane and Nye, "Between Centralization and Fragmentation," p. 8.
- ⁴⁶ Jeffrey J. Schott and Jayashree Watal, "Decision Making in the WTO," in Jeffrey Schott, ed., *The WTO After Seattle* (Washington, D.C.: Institute for International Economics, 2000), pp. 283–92; and Richard Blackhurst, "Reforming WTO Decision Making: Lessons from Singapore and Seattle," in K. G. Deutsch and B. Speyer, eds., *The World Trade Organization Millennium Round: Freer Trade in the Twenty-First Century* (London: Routledge, 2001), pp. 295–310.
- ⁴⁷ See Robert Howse and Kalypso Nicolaidis, "Enhancing WTO Legitimacy: Constitutionalization or Global Subsidiarity?" *Governance* 16, no. 1 (2003), pp. 88–89; see also Shaffer, "Parliamentary Oversight of WTO Rule-Making," p. 637; on the domestic opposition, see Daniel Esty, "The World Trade Organization's Legitimacy Crisis," *World Trade Review* 1, no. 1 (2002), p. 15.
- ⁴⁸ Robert Howse, "How to Begin to Think About the 'Democratic Deficit' at the WTO," in Stefan Grillier, ed., *International Economic Governance and Non-Economic Concerns: New Challenges for the International Legal Order* (New York: Springer-Verlag, 2003), pp. 79–101; see also Aubry Smith,

- "Executive-Branch Rulemaking and Dispute Settlement in the World Trade Organization: A Proposal to Increase Public Participation," *Michigan Law Review* 94, no. 5 (1996), pp. 1267–93.
- ⁴⁹ David E. Skaggs, "How Can Parliamentary Participation in WTO Rule-Making and Democratic Control Be Made More Effective in the WTO?" *Journal of International Economic Law* 7, no. 3 (2004), p. 656.
- ⁵⁰ Pascal Lamy, "Opening Address, Twelfth Session of the Steering Committee."
- ⁵¹ Chutikul, "Options for a Parliamentary Dimension of the WTO," p. 8.
- ⁵² Anne-Marie Slaughter, *A New World Order* (Princeton: Princeton University Press, 2004), chap. 3.
- ⁵³ Esty, "The World Trade Organization's Legitimacy Crisis"; Maura Blue Jeffords, "Turning the Protester Into a Partner for Development: The Need for Effective Consultation Between the WTO and NGOs," *Brooklyn Journal of International Law* 28, no. 3 (2002), pp. 937–88; and Nanz and Steffek, "Global Governance, Participation and the Public Sphere."
- ⁵⁴ Stein, "International Integration and Democracy," pp. 521–25.
- ⁵⁵ Christophe Crombez, "The Co-Decision Procedure in the European Union," *Legislative Studies Quarterly* 22 (February 1997), pp. 97–119; see also Sophie Boyron, "Maastricht and the Codecision Procedure: A Success Story," *The International and Comparative Law Quarterly* 45 (April 1996), pp. 293–318.
- ⁵⁶ See Alec Stone Sweet and James A. Caporaso, "From Free Trade to Supranational Polity: The European Court and Integration," in Wayne Sandholtz and Alec Stone Sweet, eds., *European Integration and Supranational Governance* (New York, Oxford University Press, 1998), pp. 92–134.